

Message Text

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E.O. 11652: N/A
TAGS: SHUM, IN
SUBJECT: QOUI INDIA COUNTRY REPORT ON HUMAN RIGHTS

REF: STATE 218630

THERE FOLLOWS RESPONSES TO REFTEL, PREPARED IN CONUNCTION
WITH THE THREE CONSULATES GENERAL.

CONSTITUTION/LEGAL GUARANTEES REGARDING ARREST AND DETENTION

1. IN PART III, FUNDAMENTAL RIGHTS, THE INDIAN CONSTITUTION
PROVIDES, INTER ALIA, THAT NO PERSON SHALL BE:

--DENIED EQUALITY BEFORE THE LAW AND EQUAL PROTECTION OF THE
LAWS;
--CONVICTED OR PUNISHED UNDER EX PORT FACTO LAW;
--SUBJECTED TO DOUBLE JEOPARDY OR MADE TO TESTIFY AGAINST
HIMSELF;
--DEPRIVED OF LIFE OR PERSONAL LIBERTY "EXCEPT ACCORDING TO
PROCEDURE ESTABLISHED BY LAW";
--DETAINED IN CUSTODY WITHOUT BEING INFORMED OF THE GROUNDS
FOR ARREST AS SOON AS POSSIBLE, OR BE DENIED THE RIGHT TO
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COUNSEL; HE MUST ALSO BE BROUGHT BEFORE A MAGISTRATE WITHIN
24 HOURS OF ARREST AND NOT DETAINED FURTHER WITHOUT THE MAGIS-
TRATE'S AUTHORITY.

2. THE CONSTITUTION, HOWEVER, ALSO PERMITS PREVENTIVE DETEN-
TION LAWS, BUT REQUIRES THAT THESE LAWS PROVIDE CERTAIN LIMITS
ON THE LENGTH OF DETENTION AND REVIEW OF SUCH DETENTION. THE

MAINTENANCE OF INTERNAL SECURITY ACT (MISA) HAS BEEN REPEALED BY PARLIAMENT. PREVENTIVE DETENTION IS STILL AUTHORIZED UNDER THE CONSERVATION OF FOREIGN EXCHANGE AND PREVENTION OF SMUGGLING ACTIVITIES ACT (COFEPOSA), AND FOUR STATES ALSO HAVE PREVENTIVE DETENTION LAWS. AT THE TIME OF REPEAL OF MISA THE HOME MINISTRY STATED THAT THERE WERE 47 PERSONS IN DETENTION UNDER THE ACT. THE GOI HAS ALSO STATED THAT DURING 1977 303 PERSONS WERE DETAINED UNDER COFEPOSA.

3. THERE IS NO REFERENCE IN THE CONSTITUTION TO (A) TORTURE OR CRUEL, INHUMAN OR DEGRADING PUNISHMENT; (B) FAIR PUBLIC TRIALS, OR (C) INVASION OF THE HOME. THERE ARE COVERED TO SOME EXTENT IN THE CRIMINAL PROCEDURE CODE, AND THE INDIAN PENAL CODE. FOR EXAMPLE, IN THE RANJAN DETENTION/DEATH CASE IN KERALA WHICH OCCURED DURING THE EMERGENCY, THREE POLICE OFFICIALS WERE RECENTLY CONVICTED UNDER THE PENAL CODE FOR WRONGFUL CONFINEMENT, FOR EXTORTING A CONFESSION, TORTURE AND CAUSING HURT AND CONCEALING EVIDENCE; THEY WERE ACQUITTED OF A MURDER CHARGE. THE CRIMINAL PROCEDURE CODE PROVIDES FOR OPEN TRIAL, BUT ALSO PERMITS THE JUDICIARY TO CLOSE THE PROCEEDINGS IN PART OR IN WHOLE; THERE ARE ALSO PROVISIONS FOR SOME CASES INVOLVING NATIONAL SECURITY TO BE HELD IN CAMERA. ACCORDING TO LEGAL SCHOLARS, THE FUNDAMENTAL RIGHT TO PERSONAL LIBERTY HAS BEEN INTERPRETED BY THE COURTS TO MEAN FREEDOM FROM PHYSICAL RESTRAINT AND NOT FREEDOM FROM INVASION OF PRIVACY AND VISITS TO THE HOUSES OF SUSPECTS. THE CRIMINAL PRO-LIMITED OFFICIAL USE

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CE DURE CODE REQUIRES WARRANTS FOR SEARCHES AND SEIZURES BUT IT ALSO PERMITS THE POLICE IN THE COURSE OF A CRIMINAL INVESTIGATION TO INSTITUTE SEARCHES WITHOUT WARRANT IF OTHERWISE THERE WOULD BE UNDUE DELAY.

4. THERE HAVE BEEN FEW REPORTS OF MAJOR VIOLATIONS OF THE ABOVE-MENTIONED RIGHTS. SUCH CASES USUALLY COME TO PUBLIC ATTENTION ONLY WHEN THEY INVOLVE A DEATH IN CUSTODY OR AROUSE COMMUNAL, CASTE OR POLITICAL SENSITIVITIES. FOR EXAMPLE, LAST APRIL IN HYDERABAD THERE WERE MAJOR RIOTS PROTESTING ALLEGED POLICE RAPE OF A MUSLIM WOMAN AND MURDER OF HER HUSBAND. THE DEATH OF A MUSLIM SUSPECT AFTER POLICE INTERROGATION SPARKED RIOTS IN PALNI AND COIMBITORE IN AUGUST. THERE ARE ALSO UNDOUBTEDLY LEGAL CHALLENGES IN THE COURTS TO INDIVIDUAL ARRESTS, DETENTIONS AND SEARHCES, BUT THESE HAVE NOT ATTRACTED PUBLIC NOTICE.

POLICE ACTIONS

5. POLICE ACTIONS AND KILLINGS DURING LABOR STRIKES IN THE PAST YEAR HAVE INVOLVED A NUMBER OF HIGHLY PUBLICISED CASES WITH REPORTED HIGH RATES OF INJURY OR DEATH. THESE INCLUDE

THE FIRING AT KANPUR IN DECEMBER IN WHICH 12 PERSONS WERE KILLED, THE MOHAN NAGAR TOOL FACTORY AND THE FARIDABAD INDUSTRIAL AREA INCIDENTS WHICH CLAIMED TWO VICTIMS EACH. MOST VIOLENCE IN LABOR DISPUTES IS THE RESULT OF INTER-UNION RIVALRY. (IN THE SOUTH AND IN WEST BENGAL, THERE IS A VIEW THAT THE POLICE HAVE NOT BEEN FORCEFUL ENOUGH IN DEALING WITH LABOR UNREST.) THE POLICE HAVE TAKEN ACTION, INCLUDING FIRING, MORE OFTEN IN DEALING WITH AGRICULTURAL, COMMUNAL, CASTE AND STUDENT DEMONSTRATIONS AND RIOTS DURING THE PAST YEAR THAN IN LABOR DISPUTES. THE MAINTENANCE OF LAW AND ORDER IS A STATE RESPONSIBILITY, AND THE STATE GOVERNMENT'S COURSE OF ACTION AS A CONSEQUENCE OF POLICE FIRINGS WHICH PRODUCE INJURY OR DEATH IS TO APPOINT A JUDICIAL COMMISSION OF INQUIRY AND IN SOME CASES TO TRANSFER OR SUSPEND POLICE OFFICIALS INVOLVED LIMITED OFFICIAL USE

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PENDING INVESTIGATION AND THE POSSIBLE FILING OF CHARGES.

CASTE SYSTEM

6. THE FOUNDATION OF MOST OF INDIAN SOCIETY IS THE CASTE SYSTEM. THERE ARE NO CONSTITUTIONAL OR LEGAL BARRIERS TO THE SYSTEM ITSELF. WHAT THE CONSTITUTION AND SUBSEQUENT LEGISLATION SEEK TO PROHIBIT ARE THE ABUSES OF THE SYSTEM. THE ONLY ABUSE SPECIFICALLY ABOLISHED IS UNTOUCHABILITY AND ITS PRACTICE IN ANY FORM IS FORBIDDEN. OTHERWISE, THE CONSTITUTION

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SUBSUMES CASTE CONSIDERATIONS IN GENERAL PROHIBITION AGAINST DISCRIMINATION BY THE STATE AGAINST ANY CITIZEN ON THE "GROUNDS ONLY OF RELIGION RACE, CASTE, SEX, PLACE OF BIRTH OR ANY OF THEM." CITIZENS CANNOT BE SUBJECT ON SUCH GROUNDS TO ANY DISABILITY OR RESTRICTION WITH REGARD TO PUBLIC SHOPS AND ACCOMODATIONS; PUBLIC WELLS AND WATER PLACES; AND PUBLIC EMPLOYMENT. IMPLEMENTING LEGISLATION WAS ENACTED IN 1955 AND FURTHER AMENDED AND STRENGTHENED IN 1976 AND RENAMED THE PROTECTION OF CIVIL RIGHTS ACT. ON THE OTHER HAND, THE CONSTITUTION SPECIFIES THAT THESE PROHIBITIONS AGAINST DISCRIMINATION SHALL NOT PREVENT THE STATE FROM MAKING SPECIAL PROVISIONS FOR THE ADVANCEMENT OF ANY SOCIALLY AND EDUCATIONALLY BACKWARD CLASS OF CITIZENS OR FOR THE SCHEDULED CASTES OR THE SCHEDULED TRIBES, THUS PROVIDING A BASIS FOR THE EXTENSIVE CENTRAL AND STATE "AFFIRMATIVE ACTION" PROGRAMS. THESE PROGRAMS ARE INTENDED TO FOSTER EDUCATIONAL, ECONOMIC AND SOCIAL DEVELOPMENT, AND INCLUDE SUCH SCHEMES AS RESERVATIONS OF PUBLIC JOBS AND EDUCATIONAL ADMISSIONS AND LAND REDISTRIBUTION. THE STATE GOVERNMENTS ALSO HAVE PROGRAM FOR THE ADVANCEMENTS OF "BACKWARD CASTES" IN ADDITION TO THOSE OF HARIJANS AND TRIBALS. FOR EXAMPLE, IN KARNATAKA AND TAMIL NADU MORE THAN HALF OF ALL GOVERNMENT JOBS ARE RESERVED FOR THESE THREE CATEGORIES, AND BIHAR SEEKS TO FOLLOW SUIT BY RESERVING 26 PER-

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CENT OF STATE JOBS FOR BACKWARD CASTES IN ADDITION TO 24 PERCENT ALREADY RESERVED FOR TRIBALS AND HARIJANS.

7. NEVERTHELESS, DE FACTO DISCRIMINATION CONTINUES. THE CONSTITUTIONALLY MANDATED COMMISSIONER FOR SCHEDULED CASTES AND SCHEDULED TRIBES STATED IN HIS 24TH ANNUAL REPORT (COVERING 1975 THROUGH 1977): "LIBERTY, EQUALITY AND FRATERNITY, SO RICHLY ENSHRINED IN THE CONSTITUTION...HAVE STILL TO ACQUIRE ANY MEANINGFUL PROPOSITION FOR MOST" OF THE WEAKER SECTIONS. THE REPORT FURTHER STATES THAT THE FACT THAT A MORE STRINGENT CIVIL RIGHTS ACT TO ERADICATE UNTOUCHABILITY HAD TO BE ENACTED THIRTY YEARS AFTER FREEDOM BEARS AMPLE TESTIMONY OF THE FACT THAT WE CONTINUE WITH OUR SIN OF DENYING BASIC HUMAN RIGHTS TO QUITE A SIZEABLE SECTION OF OUR PEOPLE." THE COMMISSIONER STATES THAT IT MAY BE A RIGHTFUL CLAIM THAT MUCH HAS BEEN DONE FOR THESE COMMUNITIES BUT "HOW LITTLE HAS BEEN ACHIEVED CANNOT BE EASILY DISCLAIMED." THE COMMISSIONER'S REPORT, WHICH CITES INSTANCES OF CONTINUED PRACTICES OF UNTOUCHABILITY AND OF HARRASSMENT OF THE SCHEDULED GROUPS AND ASSESSES THE DEGREE OF PROGRESS MADE IN CENTRAL AND STATE PROGRAMS, NOTES THAT SOCIAL DISCRIMINATION IS DEEPLY ROOTED IN THE FABRIC OF INDIAN SOCIETY, IS "WIDELY RAMPANT" IN RURAL AREAS AND CONTINUES DESPITE LEGAL PROVISIONS AND STATE EFFORTS

TO THE CONTRARY.

8. CASTE (OR COMMUNAL) DISCRIMINATION , PARTICULARLY THAT INVOLVING VIOLENCE, IS NOT A SUBJECT THAT ANY CENTRAL OR STATE GOVERNMENT IN INDIA CAN EASILY IGNORE OR TOLERATE. SUCH INCIDENTS RECEIVE CONSIDERABLE PRESS, POLITICAL AND PARLIAMENTARY ATTENTION. ASKED IN PARLIAMENT WHAT GOVERNMENT PLANNED TO DO TO AVERT CASTE DISTURBANCE, THE MINISTER OF STATE FOR HOME AFFAIRS RECENTLY NOTED THAT CRIMES AGAINST SCHEDULED CASTES WERE A STATE SUBJECT AS A LAW AND ORDER ISSUE BUT SAID THAT LIMITED OFFICIAL USE

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THE GOI KEEPS IN CLOSE TOUCH WITH STATE GOVERNMENTS AND HAS SUGGESTED MEASURES FOR PREVENTING AND DEALING PROMPTLY WITH SUCH EVENTS. HE ALSO NOTED THAT THE PRIME MINISTER HAS BEGUN A DIALOGUE WITH OPPOSITION LEADERS TO EVOLVE A NATIONAL CONSENSUS. THE STATE MINISTER TABLED STATISTICS FOR THE YEAR APRIL 1977-MARCH 1978, WHICH REVEALED THAT THERE WERE 12,746 CASES REGISTERED UNDER THE INDIAN PENAL CODE INVOLVING CRIMES AGAINST MEMBERS OF SCHEDULED CASTES. IN THESE INCIDENTS, 354 MEMBERS OF THE SCHEDULED CASTES WERE KILLED. THE COMMISSIONER'S REPORT CRITICIZED THE SLOW DISPOSITION OF SUCH CASES IN COURT (A CRITICISM MADE OF THE INDIAN LEGAL SYSTEM IN GENERAL) AND RECOMMENDED THE ESTABLISHMENT BY THE STATES OF SPECIAL COURTS.

9. DISCRIMINATION AGAINST AND VIOLENCE TOWARD SCHEDULED CASTES IS GROUNDED IN RELIGION BUT ALSO HAS SOCIAL, ECONOMIC AND POLITICAL CAUSES. MANY OF THE DISPUTE AND KILLINGS ARISE OUT OF LAND DISPUTES, SOME OF WHICH ARE THE RESULT OF GOVERNMENT REDISTRIBUTION OF LAND TO HARIJANS AND OTHER LANDLESS WEAKER SECTIONS OF SOCIETY. WITH THE PREMIUM ON EDUCATION AND THE HIGH UNEMPLOYMENT IN INDIA, CASTE HINDUS OFTEN RESENT RESERVATIONS FOR HARIJANS AND BACKWARD CASTES, AND SEEM THEMSELVES AS BEING DISCRIMINATED AGAINST AND ECONOMICALLY DEPRIVED. IN HIS REPORT, THE COMMISSIONER FOR SCHEDULED CASTES AND TRIBES NOTES THAT "UNLESS THERE IS A FEELING AGAINST THE TABOO OF VARIOUS KINDS, IMPOSED THROUGH THE SO-CALLED RELIGIOUS AND SOCIAL TEACHINGS, IT WOULD BE DIFFICULT TO MAKE THE MUCH NEEDED PROGRESS TO TACKLE "THE PROBLEM OF UNTOUCHABILITY. "LAW ALONE", HE NOTES, "CANNOT ERADICATE CASTE SYSTEM. THIS IS ONE OF THE AREAS WHERE NON-OFFICIAL AGENCIES, SOCIAL WORKERS AND INTELLIGENTIA SHOULD COME FORWARD AND COOPERATE WITH THE STATE TO EXORCISE THIS EVIL FROM THE BODY POLITIC."

INTERNATIONAL INTEREST

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10. THE ONLY INTERNATIONAL INTEREST IN HUMAN RIGHTS VIOLATIONS IN INDIA THAT WE ARE AWARE OF HAS BEEN AMNESTY INTERNATIONAL'S PROTEST ABOUT THE GOVERNMENT OF ANDHRA PRADESH'S DECISION THAT THE BHARGAVA COMMISSION HEARINGS BE HELD IN CAMERA. THE BHARGAVA COMMISSION WAS INVESTIGATING THE DEATHS OF NAXALITE PRISONERS IN THE STATE. IN PROTEST TO THE GOAP'S DECISION, JUSTICE BHARGAVA WITHDREW HIS REQUEST FOR AN EXTENSION OF THE COMMISSION'S TENURE. (AS FOR THE NAXALITES IN GENERAL, THE HOME MINISTRY HAS STATED THAT AS OF JULY 1, THERE WERE 171 NAXALITE UNDERTRIAL PRISONERS IN THE VARIOUS STATES. THESE ARE DESCRIBED AS PERSONS WHOM THE STATE GOVERNMENTS DO NOT "CONSIDER FIT FOR RELEASE OR THOSE CHARGED WITH CRIMINAL OFFENCES IN RECENT MONTHS.")
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